

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #02	CCRB Case #: 201910390	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/24/2019 12:00 AM, Sunday, 11/24/2019 6:13 PM	Location of Incident: § 87(2)(b) and the 67th Precinct stationhouse	18 Mo. SOL 1/8/2022	Precinct: 67		
Date/Time CV Reported Mon, 12/02/2019 6:27 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 12/02/2019 6:27 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. PO James Lukeson	09696	935216	067 PCT
2. SGT Brian Schulman	00000	939435	067 PCT
3. An officer			067 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Adam Gierlachowski	19124	958629	067 PCT
2. POM Steven Lavin	02918	952971	067 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Brian Schulman	Abuse: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman stopped the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
B.SGT Brian Schulman	Abuse: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman frisked § 87(2)(b)	§ 87(2)(b)
C.SGT Brian Schulman	Abuse: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman searched § 87(2)(b)	§ 87(2)(b)
D.SGT Brian Schulman	Abuse: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
E.PO James Lukeson	Abuse: At § 87(2)(b) in Brooklyn, Police Officer James Lukeson refused to provide his name to § 87(2)(b)	§ 87(2)(b)
F.PO James Lukeson	Abuse: At § 87(2)(b) in Brooklyn, Police Officer James Lukeson refused to provide his shield number to § 87(2)(b)	§ 87(2)(b)
G.PO James Lukeson	Discourtesy: At § 87(2)(b) in Brooklyn, Police Officer James Lukeson spoke discourteously to § 87(2)(b)	§ 87(2)(b)
H.SGT Brian Schulman	Abuse: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman seized § 87(2)(b) property.	§ 87(2)(b)
I. An officer	Discourtesy: At the 67th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)	§ 87(2)(b)
J. An officer	Off. Language: At the 67th Precinct stationhouse, an officer spoke offensively to § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)		

Case Summary

On December 2, 2019, § 87(2)(b) filed this complaint via the CCRB website (Board Review 01). This case was initially assigned to Inv. Kenneth Shelton and was reassigned to SI Jean-Paul Lozada on May 6, 2021 upon Inv. Shelton's departure from the agency.

On November 24, 2019, at approximately 6:13 p.m., Sergeant Brian Schulman and Police Officer James Lukeson of the 67th Precinct allegedly saw § 87(2)(b) using his cell phone while driving, and they pulled him over as he was turning into his driveway at § 87(2)(b) in Brooklyn (**Allegation A – Abuse of Authority: Vehicle Stop**, § 87(2)(g)). Police Officer Lukeson smelled alcohol on § 87(2)(b) breath and saw alcohol inside the vehicle, and he asked § 87(2)(b) to exit the vehicle. Police Officer Lukeson frisked § 87(2)(b) waist and allegedly searched his pockets (**Allegations B and C – Abuse of Authority: Frisk, Search of Person**; § 87(2)(g)). Sergeant Schulman searched the passenger side of § 87(2)(b) vehicle (**Allegation D – Abuse of Authority: Vehicle Search**, § 87(2)(g)). § 87(2)(b) asked Police Officer Lukeson for his name and shield number, and Police Officer Lukeson responded by stating, “I was trying to pull you over about a block and a half ago, you’re on your phone, alright, you’re not paying attention to me, you pull in then you pull this harassment shit?... We’re trying to be cool with you and we’re trying to explain to you but you’re not listening and you’re asking for badge numbers and shit? Nah, listen it don’t go that way.” (**Allegations E and F – Abuse of Authority: Refusal to Provide Name/Shield Number**, § 87(2)(g)). **Allegation G – Discourtesy: Word**, § 87(2)(g)).

§ 87(2)(b) was handcuffed and transported to the 67th Precinct stationhouse, and Sergeant Schulman drove § 87(2)(b) vehicle to the stationhouse (**Allegation H – Abuse of Authority: Seizure of Property**, § 87(2)(g)). At the stationhouse, an unidentified officer allegedly offered to release § 87(2)(b) from the stationhouse with a summons if he promised to not file a complaint. § 87(2)(b) responded, “Is this a trick?” and the officer replied, “Are you retarded? Don’t you understand the question? Fuck!” (**Allegations I and J – Discourtesy: Word, Offensive Language**; § 87(2)(g)). § 87(2)(b) was released from the stationhouse with his vehicle and a summons for an open container of alcohol (Board Review 02).

§ 87(2)(g), § 87(4-b)

Body-worn camera (BWC) footage was obtained from the BWCs and Police Officer Lukeson (IA#32, Board Review 03) and Police Officer Adam Gierlachowski of the 67th Precinct (IA#31, Board Review 04).

Findings and Recommendations

Allegation (A) Abuse of Authority: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) was interviewed on December 26, 2019 (Board Review 05). Police Officer Lukeson was interviewed on December 4, 2020 (Board Review 06) and again on November 3, 2021 (Board Review 07). Sergeant Schulman was interviewed on October 19, 2021 (Board Review 08).

§ 87(2)(b) stated that he parked his vehicle in his driveway at § 87(2)(b) and exited his vehicle, at which point two unmarked police vehicles stopped in front of the driveway. Police Officer Lukeson asked § 87(2)(b) to get back inside his vehicle, and § 87(2)(b) complied. § 87(2)(b) asked why he was being stopped, and Police Officer Lukeson said, “We’ll tell you later.” At

no point did the officers tell § 87(2)(b) why he was initially stopped.

Police Officer Lukeson stated that he was driving on Remsen Avenue when he saw § 87(2)(b) driving in the opposite direction while holding a cell phone. Police Officer Lukeson communicated this observation to Sergeant Schulman, made a U-turn, pulled behind § 87(2)(b) and activated his turret lights and sirens. § 87(2)(b) did not immediately pull over, and he drove approximately two blocks before pulling into a driveway.

In his memo book (Board Review 09), Police Officer Lukeson wrote that he effected the vehicle stop because § 87(2)(b) was on the phone while driving, and that § 87(2)(b) admitted to this infraction.

Sergeant Schulman did not recall why § 87(2)(b) was pulled over.

Police Officer Lukeson's and Police Officer Gierlachowski's BWC footage begins when § 87(2)(b) and the officers are speaking at the rear of his vehicle, and neither captures the moment when § 87(2)(b) was initially pulled over. At runtime 00:40 of Police Officer Gierlachowski's BWC footage (Board Review 04), one of the officers off camera states, "You have a million things wrong, and we were trying to work with you. We were trying to pull you over for three blocks, and you said you're on your phone because you were on your phone because you didn't pay attention to us." At runtime 01:12, Police Officer Lukeson states, "I was trying to pull you over about a block and a half ago. You were on your phone, alright? You were not paying attention to me." At no point in Police Officer Lukeson's and Police Officer Gierlachowski's BWC footage does § 87(2)(b) deny the allegation that he was using his cell phone while driving.

New York State Vehicle and Traffic Law Section 1225-C (Board Review 10) prohibits drivers from holding a mobile telephone in the proximity of their ear while operating a motor vehicle upon a public highway.

§ 87(2)(g) consistency between Police Officer Lukeson's statement, the officers' contemporaneous statements captured on BWC, and Police Officer Lukeson's memo book entries, as well as § 87(2)(b) failure to dispute on BWC the allegation that he was driving while using a cell phone, § 87(2)(g)

Allegation (B) Abuse of Authority: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman frisked § 87(2)(b)

Allegation (C) Abuse of Authority: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman searched § 87(2)(b)

Allegation (D) Abuse of Authority: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman searched the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) stated that when he exited his vehicle, Police Officer Lukeson frisked his waist and chest and searched the pockets of his jacket, sweater, and pants. At around the same time, Sergeant Schulman and other officers searched § 87(2)(b) vehicle but § 87(2)(b) was unable to specify which areas of the vehicle the officers searched except for the front passenger seat. § 87(2)(b) had a Corona bottle in the back seat, which he stated was unopened. § 87(2)(b) denied consuming alcohol prior to being pulled over. § 87(2)(b) was handcuffed and transported to the 67th Precinct stationhouse.

Police Officer Lukeson stated that while § 87(2)(b) was still in his car, he smelled alcohol on § 87(2)(b) breath and saw an empty Corona bottle in the back seat and a slushie with a large straw in the front, and he immediately suspected § 87(2)(b) of being intoxicated. Once § 87(2)(b) exited the vehicle, Police Officer Lukeson frisked him for weapons in his waistband area without searching his pockets, because he did not want § 87(2)(b) to grab a weapon while the officers spoke to him. Police Officer Lukeson did not see any bulges on § 87(2)(b) person. Police Officer Lukeson had no reason to believe § 87(2)(b) had any weapons, but he noted that he did not want to put § 87(2)(b) in the back seat of the police vehicle with any weapons or contraband on him. § 87(2)(b) slurring his words, admitted to having Patron tequila in his slushie. An officer entered the vehicle and retrieved the slushie without searching it further, and an officer searched § 87(2)(b) pockets incident to his lawful arrest, but Police Officer Lukeson did not recall which officer(s) these were. Police Officer Lukeson transported § 87(2)(b) to the 67th Precinct stationhouse, and an officer drove § 87(2)(b) vehicle to the stationhouse for safekeeping.

In his memo book (Board Review 09), Police Officer Lukeson wrote that § 87(2)(b) smelled of alcohol, had a clear slushie with Patron inside, and admitted to having an alcoholic beverage. Police Officer Lukeson provided a photograph of § 87(2)(b) license and alcoholic slushie (Board Review 11).

Police Officer Lukeson's and Police Officer Gierlachowski's BWC footage begin while § 87(2)(b) and the officers are standing at the rear of his vehicle. At runtime 00:30 of Police Officer Gierlachowski's BWC footage (Board Review 04), Police Officer Lukeson handcuffs § 87(2)(b). At runtime 01:04, Police Officer Lukeson says § 87(2)(b) is being placed under arrest and that he has an open container of alcohol in the vehicle. At runtime 01:22, Police Officer Gierlachowski frisks § 87(2)(b) and searches his pockets while § 87(2)(b) is in handcuffs. Police Officer Lukeson is not seen frisking or searching § 87(2)(b) in either video. No officer is seen searching § 87(2)(b) vehicle or retrieving his slushie. At no point in either video does § 87(2)(b) dispute that he has alcohol in the vehicle or had been drinking.

Sergeant Schulman had no memory of the incident independent of the BWC footage. He stated that everyone who is placed under arrest is frisked and searched.

New York State Vehicle and Traffic Law Section 1192 (Board Review 22) states, "No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol."

Patrol Guide Procedure 208-03 (Board Review 12) states that once an arrest has been effected, officers must immediately frisk and search the prisoner and search the adjacent vicinity for evidence, weapons, and contraband.

In New York v. Belton (453 U.S. 454, Board Review 23), the Supreme Court of the United States decided that officers who have made a lawful custodial arrest of the occupant of an automobile may, as a contemporaneous incident of that arrest, search the passenger compartment of the vehicle within the arrestees immediate control.

§ 87(2)(g) consistency between Police Officer Lukeson's statement, the officers' contemporaneous statements captured on BWC, the summons issued to § 87(2)(b) and Police Officer Lukeson's memo book entries and photograph, as well as § 87(2)(b) failure to dispute on BWC the allegations that he was drinking or had an open container of alcohol in the vehicle, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer James Lukeson refused to provide his name to § 87(2)(b)

Allegation (F) Abuse of Authority: At § 87(2)(b) in Brooklyn, Police Officer James Lukeson refused to provide his shield number to § 87(2)(b)

Allegation (G) Discourtesy: At § 87(2)(b) in Brooklyn, Police Officer James Lukeson spoke discourteously to § 87(2)(b)

It is undisputed that § 87(2)(b) requested Police Officer Lukeson's name and shield number, and that Police Officer Lukeson used profanities while speaking to § 87(2)(b)

§ 87(2)(b) stated that after the officers searched his vehicle, he asked Police Officer Lukeson for his name and shield number, and Police Officer Lukeson responded by saying, "You want to be a jackass?" Police Officer Lukeson made additional profane statements, but § 87(2)(b) did not recall these statements.

Police Officer Lukeson's and Police Officer Gierlachowski's BWC footage begins when § 87(2)(b) is standing at the rear of his vehicle while speaking to the officers and ends when § 87(2)(b) is lodged in a cell at the 67th Precinct stationhouse. Neither video captures § 87(2)(b) requesting any officer's name or shield number or Police Officer Lukeson providing his name or shield number to him. However, at runtime 00:50 of Police Officer Lukeson's BWC (Board Review 03), Police Officer Lukeson states, "You know why you're being arrested right now? Because you don't know when to stop. You have open alcohol inside the car, okay? I was trying to pull you over about a block and a half ago, you're on your phone, alright, you're not paying attention to me, you pull in then you pull this harassment shit? No, don't play that man, it doesn't go that way. It doesn't go that way. You're wrong in so many different directions right now. We're trying to be cool with you and trying to explain to you, but you're not listening, and then you're asking for badge numbers and shit? Nah, listen, it don't go that way." Police Officer Lukeson is not heard using the word "jackass" at any point.

Police Officer Lukeson stated that when § 87(2)(b) requested his name and shield number, he was "becoming very belligerent." In response, Police Officer Lukeson said to § 87(2)(b) something akin to, "I was trying to be cool to you. I know your mom's here. I was trying to explain to you why we stopped you... Now you want to film me after that? I don't appreciate that shit. Turn around and put your hands behind your back." When asked why he used profanities toward § 87(2)(b) Police Officer Lukeson replied, "I could have used something different. Like I said, I wasn't cursing at him. I'm 43 years old... I wasn't cursing at him, I was just cursing." Police Officer Lukeson denied saying, "You want to be a jackass?" Police Officer Lukeson stated that he provided his name and shield number to § 87(2)(b) but he did not recall whether he did so at the scene or at the stationhouse. He did not immediately provide this information upon § 87(2)(b) request because § 87(2)(b) was intoxicated and belligerent.

Sergeant Schulman did not know whether § 87(2)(b) requested any officer's name or shield

number. He did not hear any officers use profanity during the incident.

Administrative Guide Procedure 304-11 (Board Review 13) states officers must “courteously and clearly state [their] rank, name, shield number and command, or otherwise provide them, to anyone who request [them] to do so.”

According to Patrol Guide Procedure 200-02 (Board Review 14), the NYPD is committed to “treating every citizen with compassion, courtesy, professionalism, and respect.”

While officers are generally prohibited from using profanities toward civilians, they may use profanities “in the context of a dynamic situation over which [they are] attempting to gain control,” but may not do so when it “[serves] no legitimate purpose but to belittle” a civilian (PD v. Pichardo, DAO DCT Case Number 2015-15012, Board Review 15).

Although the BWC footage does not capture Police Officer Lukeson providing his name or shield number to § 87(2)(b), the footage does not capture Police Officer Lukeson’s interactions with § 87(2)(b) in their entirety. § 87(2)(g)

While the BWC does not show Police Officer Lukeson referring to § 87(2)(b) as a “jackass” as alleged, it does show him using the word “shit” while speaking to him. When Police Officer Lukeson used the word “shit” while speaking to § 87(2)(b), § 87(2)(b) was standing still at the rear of his vehicle in the presence of four police officers and was not behaving in a disruptive manner.

§ 87(2)(g)

Allegation (H) Abuse of Authority: At § 87(2)(b) in Brooklyn, Sergeant Brian Schulman seized § 87(2)(b) property.

It is undisputed that Sergeant Schulman drove § 87(2)(b) vehicle to the 67th Precinct stationhouse after § 87(2)(b) was placed under arrest, and that the vehicle was returned to § 87(2)(b) once he was released with a summons.

At runtime 02:39 of Police Officer Gierlachowski’s BWC footage (Board Review 04), Sergeant Schulman tells § 87(2)(b) mother, § 87(2)(b) to step away from the vehicle so he can pull out of the driveway.

Sergeant Schulman had no memory of the incident independent of the BWC footage. He did not know which officer drove § 87(2)(b) vehicle to the stationhouse, but he noted that it would have been transported to the stationhouse for safekeeping following § 87(2)(b) arrest. Sergeant Shulman pointed out that § 87(2)(b) vehicle was stopped with half of it in the driveway and half of it on the sidewalk, and that it was not his job to “valet” the vehicle and park it in § 87(2)(b) driveway. Further, he noted that he did not want to leave the keys with § 87(2)(b) because he did not know whether she had the authority to drive the vehicle.

Police Officer Lukeson stated that an officer drove § 87(2)(b) vehicle to the stationhouse for safekeeping, but he did not know which officer drove it.

As evidenced by the photograph taken by Police Officer Lukeson, § 87(2)(b) license lists the incident location – § 87(2)(b) – as his residence.

As discussed by the court in People v. Weeks, 182 A.D.3d 539 (2020), Board Review 25) and People v. Francis 12 Misc. 3d 781 (2006) (Board Review 24), officers may only seize or impound the vehicle of an arrested individual if there is reason to believe that the car itself is connected to criminal activity or is in the interest of public safety or the police’s ‘community caretaking’ functions. Valid reasons for impounding a vehicle include a reasonable basis to believe that the car itself is evidence of a crime, the car cannot be operated because it is unregistered, uninsured or uninspected, the car was involved in a fatal automobile accident, or the car was driven by an unlicensed driver or a driver whose license is suspended and there is no one who is legally able to drive the car.

Both Sergeant Schulman and Police Officer Lukeson testified that they seized § 87(2)(b) vehicle for safekeeping rather than arrest evidence, and neither testified that the vehicle was linked to any criminality. Police Officer Lukeson also noted that when Sergeant Schulman impounded § 87(2)(b) vehicle, the alcoholic beverages had already been removed from the vehicle. As such, by the officers’ own admission, the vehicle itself was not evidence of a crime or linked to any criminal activity. Further, Sergeant Schulman could have fulfilled his “community caretaking function” by simply completing § 87(2)(b) parking maneuver and parking the vehicle fully in the driveway of his home, rather than driving it back out of the driveway and to the stationhouse. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (I) Discourtesy: At the 67th Precinct stationhouse, an officer spoke discourteously to § 87(2)(b)

Allegation (J) Offensive Language: At the 67th Precinct stationhouse, an officer spoke offensively to § 87(2)(b)

§ 87(2)(b) stated that at the 67th Precinct stationhouse, the officers from the scene of his arrest escorted him to “an interrogation room,” where Police Officer Lukeson asked him if he would rather be released from the stationhouse or taken to central booking and told him that he would be released from the stationhouse if he promised to not file a complaint about the incident. § 87(2)(b) stated that the officers used profanities during this conversation, but he did not recall any specific statements made or words used, and he did not specify which officer(s) used profanities.

In his Notice of Claim filed on December 13, 2019 (Board Review 16), § 87(2)(b) stated that he asked, ‘Is this a trick?’ and that one of the officers from the scene of his arrest responded, “Are you retarded? Don’t you understand the question? Fuck!” The Notice of Claim does not specify which officer made this statement.

Police Officer Lukeson’s and Police Officer Gierlachowski’s BWC footage does not capture any such conversation.

Neither Police Officer Lukeson nor Sergeant Schulman recalled any such conversation taking place with § 87(2)(b) in a room at the stationhouse. Both denied using profanities toward § 87(2)(b) at the stationhouse.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 -
 -
- Sergeant Brian Schulman has been a member of service for 16 years and has been a subject in 13 other CCRB complaints and 30 other allegations, of which two were substantiated in two cases.
 - 201305459 involved a substantiated allegation of Discourtesy - Word against Sergeant Schulman. The Board recommended Instructions and the NYPD imposed Instructions.
 - 201400712 involved a substantiated Frisk allegation against Sergeant Schulman. The Board recommended Formalized Training and the NYPD imposed Instructions.
 - § 87(2)(g)
- Police Officer Lukeson has been a member of service for 17 years and has been a subject in six other CCRB complaints and 14 other allegations, of which five were substantiated in two cases.
 - 200716565 involved substantiated allegations of Question, Search of Person, and Stop against Police Officer Lukeson. The Board recommended Charges, and the NYPD imposed Command Discipline B.

- 200901903 involved substantiated allegations of Refusal to Provide Name/Shield Number and Discourtesy – Word against Police Officer Lukeson. The Board recommended Charges, and the NYPD imposed Command Discipline B.
- § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- § 87(2)(b) [REDACTED] filed a Notice of Claim with the Office of the NYC Comptroller alleging unlawful search, false arrest, false imprisonment, malicious prosecution, and violation of civil rights, and he is seeking \$1 million as redress (Board Review 16).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Squad No.: 02

Investigator: Jean-Paul Lozada SI Jean-Paul Lozada 11/18/2021
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Alexander Opoku-Agyemang 11/19/2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date